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In re Application of
Faquir C. Jain et al.
Application No. 10/805,070
Filed: March 22, 2004
Attorney Docket No. Conn2C
Title: FULL COLOR DISPLAY STRUCTURES
USING PSEUDOMORPHIC CLADDED
QUANTUM DOT NANOPHOSPHOR THIN
FILMS

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OFFICE OF PETITIONS

DECISION ON PETITION UNDER
37 C.F.R. §1.182

This is a decision on the petition under 37 C.F.R. §1.182, filed September 20, 2004, requesting that the above-identified application be accorded a filing date of March 22, 2004, with Figure 10d as part of the original disclosure of the application.

The application was deposited on March 22, 2004. However, on June 3, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Omitted Item(s) in a Nonprovisional Application – Filing Date Granted" (notice) stating that the application had been accorded a filing date, and advising applicants that it appeared as though the application was deposited without Figure 10d. The notice set a two-month period for response.

Three months later, the instant petition was filed, along with Figure 10d and a copy of the notice.

Although Petitioner has set forth that the figure was not included on filing, Petitioner contends that it was constructively included, through incorporation by reference.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted. The specification indicates that the instant application is a continuation of application 09/547,415 and the Utility Patent Application Transmittal sheet indicates that the entire disclosure of the parent application is incorporated by reference.

Section 201.06(c) of the MPEP sets forth, in part:

an applicant may incorporate by reference the prior application by including, in the continuation or divisional application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The incorporation by reference statement can only be relied upon to permit the entering of a portion of the

prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition (emphasis added) provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference.

For these reasons, the petition under 37 CFR §182 is **DISMISSED**.

The application will receive a filing date of March 22, 2004. However, Figure 10d submitted with the instant petition will not be entered.

If Petitioner desires for the missing page to be included, he should submit this page via an amendment. This amendment, of course, will not be entered until it has been reviewed by the examiner for new matter¹. The amendment is not new matter if the substance was a part of the disclosure of the prior application.

The original application papers will include only those application papers present on the date of deposit.

The petition fee of \$130.00 will not be refunded, as this petition was not necessitated by any error on the part of the Office.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of March 22, 2004, using only the application papers filed on that date.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.



Paul Sharoski
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United States Patent and Trademark Office

¹ See MPEP 608.02(a).